

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES A. RUSSELL,

Petitioner, : Case No. 3:15-cv-331

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

LYNEAL WAINWRIGHT, Warden,

Respondent.

**ORDER DISSOLVING STAY; CONDITIONAL WRIT OF HABEAS
CORPUS**

To: Lyneal Wainwright, Warden and Respondent:

On April 28, 2020, the United States Court of Appeals for the Sixth Circuit affirmed this Court's decision that Petitioner be granted a writ of habeas corpus ordering his release from custody unless he is allowed a new appeal in which the assignment of error at issue – whether Petitioner's convictions for murder and aggravated robbery should be merged under Ohio Revised Code § 2941.25 – is presented for decision. *Russell v. Wainwright*, Case No. 19-3067, 2020 U.S. App. LEXIS 13886 (6th Cir. Apr. 28, 2020)(unreported; copy at ECF No. 70). This Court had entered judgment to that effect November 11, 2019, but had stayed judgment pending appeal (ECF No. 68). Appellate proceedings have concluded and the Sixth Circuit has issued its mandate, returning jurisdiction to this Court, on May 20, 2020 (ECF No. 71).

Accordingly, the stay of proceedings is DISSOLVED and it is hereby ORDERED that

Respondent release Petitioner from custody unless, not later than 180 days from the date of this Order, Petitioner has been granted a new appeal by the Ohio Second District Court of Appeals in which the assignment of error quoted above is presented for decision.

The Clerk shall certify a copy of this Order to The Honorable Michael Tucker, Presiding Judge of Second District Court of Appeals and another copy to James Nealon, Deputy Administrator of that court, both at 41 North Perry Street, Dayton, Ohio 45402.

May 26, 2020

*/s Thomas M. Rose

Thomas M. Rose
United States District Judge